

establishment therein. The term “permanent establishment” as used in the convention implies the active conduct therein of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Danish enterprise does not mean that such enterprise has a permanent establishment therein. As to the effect of the maintenance of a permanent establishment within the United States upon exemption from United States tax in the case of interest and royalties and reduction in the rate of United States tax in the case of dividends, see § 521.108.

(2) The term “enterprise” means any commercial or industrial undertaking whether conducted by an individual, partnership, corporation, or other entity. It includes such activities as manufacturing, merchandising, mining, processing, and banking. It does not include the rendition of personal services. Hence, a non resident alien who is a resident of Denmark and who renders personal services is not, merely by reason of such services, engaged in an enterprise within the meaning of the convention and his liability to United States tax is not affected by Article III of the convention.

(3) The term “Danish enterprise” means an enterprise carried on in Denmark by a resident of Denmark or by a Danish corporation or other entity. The term “Danish corporation or other entity” means a partnership, corporation or other entity created or organized in Denmark or under the laws of Denmark.

(4) The term “industrial or commercial profits” means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of a Danish enterprise as defined in this section. Such term does not include rentals, royalties, interest, dividends, fees, compensation for personal services, nor gains derived from the sale or exchange of capital assets. Such enumerated items of income are not governed by the provisions of Article III of the convention.

§ 521.105 Scope of convention with respect to determination of “industrial or commercial profits”.

(a) *General.* Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial or commercial profits unless it has a permanent establishment in the latter State. Hence, a Danish enterprise is subject to United States tax upon its industrial and commercial profits to the extent of such profits from sources within the United States only if it has a permanent establishment within the United States. From the standpoint of Federal income taxation, the article has application only to a Danish enterprise and to the industrial and commercial income thereof from sources within the United States. It has no application for example, to compensation for labor or personal services performed in the United States nor to income derived from real property located in the United States, including rentals and royalties therefrom, nor to gains from the sale or disposition of such property, nor to interest, dividends, royalties, other fixed or determinable annual or periodical income and gains derived from the sale or exchange of capital assets.

(b) *No United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark or a Danish corporation, carrying on an enterprise in Denmark and having no permanent establishment in the United States, is not for taxable years beginning on or after January 1, 1948, subject to United States income tax upon industrial or commercial profits from sources within the United States. For example, if the Danish enterprise carried on by such alien or corporation sells, in 1948, merchandise, such as silverware, dairy products, or liquors, through a bona fide commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the resulting profits are, under the terms of Article III of the convention, exempt from United States income tax. Likewise no permanent establishment exists and no United

States income tax attaches to such profits if such enterprise, through its sales agents in the United States, secures orders for its products, the sales being made in Denmark.

(c) *United States permanent establishment.* A nonresident alien (including a nonresident alien individual, fiduciary and partnership), who is a resident of Denmark, or a Danish corporation, whether or not carrying on a Danish enterprise, having a permanent establishment in the United States, is subject to tax upon industrial or commercial profits from sources within the United States to the same extent as are nonresident aliens and foreign corporations engaged in trade or business therein. In the determination of the income taxable to such alien or foreign corporation all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment in the United States. Hence, for example, if a Danish enterprise having a permanent establishment in the United States sells in the United States, through a commission agent therein goods produced in Denmark, the resulting profits derived from United States sources from such transactions are allocable to such permanent establishment even though such transactions were carried on independently of such establishment. In determining industrial and commercial profits no account shall be taken of the mere purchase of merchandise within the United States by the Danish enterprise. The industrial or commercial profits of the permanent establishment shall be determined as if the establishment were an independent enterprise engaged in the same or similar activities and dealing at arm's length with the enterprise of which it is a permanent establishment.

§ 521.106 Control of a domestic enterprise by a Danish enterprise.

Article IV of the convention provides, in effect, that if a Danish corporation by reason of its control of a domestic enterprise imposes on such later enterprise conditions different from those which would result from normal business relations between independent enterprises, the accounts

between the enterprises may be adjusted so as to ascertain the true net income of each enterprise. The purpose is to place the controlled domestic enterprise on a tax parity with an uncontrolled domestic enterprise by determining, according to the standard of an uncontrolled enterprise, the true net income from the property and business of the controlled enterprise. The basic objective of the article is that if the accounting records do not truly reflect the net income from the property and business of such domestic enterprise the Commissioner of Internal Revenue may intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income or deductions of any item or element affecting net income as between such domestic enterprise and the Danish enterprise by which it is controlled or directed, determine the true net income of the domestic enterprise. The provisions of § 29.45-1 of Regulations 111 (26 CFR 1949 ed. Supps. 29.45-1) [and § 39.45-1 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)] shall, insofar as applicable, be followed in the determination of the net income of the domestic business.

§ 521.107 Income from operation of ships or aircraft.

The income derived from the operation of ships or aircraft registered in Denmark by a nonresident alien who is a resident of Denmark, or by a Danish corporation, and carrying on an enterprise in Denmark, is, for taxable years beginning on or after January 1, 1948, exempt from United States income tax under the provisions of Article V of the convention.

§ 521.108 Exemption from, or reduction in rate of, United States tax in the case of dividends, interest and royalties.

(a) *Dividends*—(1) *General.* The tax imposed by the Internal Revenue Code in the case of dividends received from sources within the United States by (i) a nonresident alien (including a nonresident alien individual, fiduciary and partnership) who is a resident of Denmark, or (ii) a Danish corporation is, for taxable years beginning on and